

ESTTA Tracking number: **ESTTA541566**

Filing date: **06/04/2013**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91204070
Party	Defendant Tammy L. Goldthorpe fka Tammy Price
Correspondence Address	NATHAN S WINESETT AVERY WHIGHAM & WINESETT PA PO BOX 3277 DULUTH, MN 55803-3277 UNITED STATES nathanwinesett@awwLegal.com
Submission	Motion to Strike
Filer's Name	Nathan S. Winesett
Filer's e-mail	nathanwinesett@awwLegal.com
Signature	/Nathan S. Winesett/
Date	06/04/2013
Attachments	20-Applicant's Objection to Opposer NoticeofReliance.pdf(63493 bytes )

NATHAN S. WINESETT  
AVERY, WHIGHAM & WINESETT, P.A.  
P.O. BOX 3277  
Duluth, MN 55803  
Telephone: (218) 269-6803  
Facsimile: (218) 525-2708

Attorneys for Tammy L. Goldthorpe fka Tammy Price  
Opposed Mark: SLIPPERY WIZARD (Class 1)  
U.S. Trademark Application Serial Number 85/099,334

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Brody Chemical Company, Inc.  Opposer,  v.  Goldthorpe, Tammy L. fka Tammy Price  Applicant.	Opposition No. 91/204,070
--	---------------------------

**APPLICANT'S MOTION TO STRIKE OPPOSER'S  
NOTICE OF RELIANCE IN PART**

Applicant, Tammy L. Goldthorpe fka Tammy Price, hereby objects to and moves to strike in part Opposer's Notice of Reliance, which was filed on February 1, 2013 on the grounds set forth herein.

1. Applicant objects to EXHIBIT 2 and the description for said Exhibit under list item "2" on page 2 of Opposer's Notice of Reliance. Opposer describes EXHIBIT

**CERTIFICATE OF DEPOSIT**

I hereby certify that this correspondence is being deposited with the Trademark Trial and Appeal Board via ESTTA on the date indicated below.

Date of Deposit: 6/4/2013

/Nathan S. Winesett/

2 as “Applicant's Response to Opposer's First Request for Production of Documents and documents produced therewith; attached as Exhibit 2 thereto.”

The inclusion of “documents produced therewith” and the implication of their absence from EXHIBIT 2 should be stricken as produced documents may not be made of record by notice of reliance alone and the issue of whether documents were produced as part of Applicant's response or whether such production was deficient is not appropriate for introduction by notice of reliance. Applicant believes that this Exhibit, in conjunction with EXHIBIT 3 (objected to below), and the respective descriptions were made for the purpose of insinuating that Applicant has not cooperated in the discovery process, which is untrue. There were only two document requests, one of which didn't identify any documents with any particularity or within the possession of Applicant and the other which requested documents in the possession of Opposer, which ironically Applicant has been unable to obtain. Regardless, this purpose and the issue of cooperation during discover is improperly made by Opposer's Notice of Reliance. Rather, the procedure to resolve such issues is by motion to compel so that both parties positions can be properly heard. In this case, neither party has filed a motion to compel.

2. Applicant objects to and moves to strike EXHIBIT 3 in its entirety and the description for said Exhibit under list item “3” on page 2 of the Opposer's Notice of Reliance in its entirety. Applicant refers to its objection and argument for EXHIBIT 2 above and adds that the proffered declaration in EXHIBIT 3 is not

appropriate for introduction by Notice of Reliance and is also irrelevant and constitutes hearsay.

3. Applicant objects to and moves to strike EXHIBIT 4 on the grounds that the file wrapper for the application that is the subject of this proceeding is automatically of record and speaks for itself and should be referred to directly.
4. Applicant objects to and moves to strike in its entirety the argument made by Opposer in the last paragraph on page 2, lines 13-18, as being impermissible argument and not appropriate for introduction by Notice of Reliance. Applicant believes this argument far exceeds an appropriate description of relevance.

In view of the foregoing, Applicant respectfully requests that the Board sustain Applicant's objections and move to strike Opposer's Notice of Reliance in part as set forth above.

DATED this 4<sup>th</sup> day of June, 2013.

Respectfully submitted,

/Nathan S. Winesett/

Nathan S. Winesett  
Attorneys for Applicant  
Tammy L. Goldthorpe fka Tammy Price

AVERY, WHIGHAM & WINESETT, P.A.  
P. O. Box 3277  
Duluth, MN 55803  
(218) 269-6803

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing APPLICANT'S MOTION TO STRIKE OPPOSER'S NOTICE OF RELIANCE IN PART was served on Opposer via email, facsimile, and by depositing said true and correct copy with the United States Postal Service, First Class Mail, postage prepaid, this 4<sup>th</sup> day of June, 2013, in an envelope addressed to Opposer's attorney of record as follows:

DAVID G BRAY  
DICKINSON WRIGHT/MARISCAL WEEKS  
2901 N CENTRAL, STE 200  
PHOENIX, AZ 85012-2705  
UNITED STATES  
dbray@dickinsonwright.com, sclaus@dickinsonwright.com  
Facsimile: (602) 285-5100

/Nathan S. Winesett/